

SERVICE DATE – OCTOBER 13, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-314 (Sub-No. 2X)

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY-ABANDONMENT
EXEMPTION-IN LINN COUNTY, IA

Decided: October 12, 2005

By decision and notice of interim trail use or abandonment (NITU) served on October 25, 2002, the Board granted Chicago Central & Pacific Railroad Company (CCP) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a segment of the Marion-Louisa Industry Lead, extending from milepost ZA 225.7 to milepost ZA 229.5, a distance of approximately 3.8 miles in Linn County, IA. The exemption was granted subject to trail use, public use, environmental, and standard employee protective conditions, and the Board authorized a 180-day period for the City of Marion, IA (Marion), and the City of Cedar Rapids, IA, to negotiate an interim trail use/rail banking agreement with CCP. The negotiating period under the NITU was scheduled to expire on April 25, 2003, but was subsequently extended by decisions served on April 23, 2003, October 29, 2003, April 21, 2004, October 15, 2004, and April 13, 2005, with the latest extension due to expire on October 11, 2005.¹

On October 11, 2005, Marion filed a request to extend the NITU negotiating period until December 31, 2005, for that portion of the rail line within its corporate city limits. Marion states that the parties are in active negotiations but agree that an additional extension of time is needed. By letter filed that same date, CCP states that it agrees with the extension request.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to December 31, 2005.

¹ The decision served on April 23, 2003, modified the NITU to cover only that portion of the line between mileposts ZA 225.7 and ZA 229.1. The decision served on October 29, 2003, modified the NITU to cover only that portion of the line between mileposts ZA 225.7 and ZA 228.45.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the interim trail use negotiating period for the portion of the line between mileposts ZA 225.7 and ZA 228.45 is granted.
2. The negotiating period under the NITU is extended to December 31, 2005.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary